

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 92

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE
LIMITATION OF FEES AND REGULATION OF PAYDAY LOANS; AMENDING,
REPEALING AND ENACTING CERTAIN PROVISIONS OF THE NEW MEXICO
SMALL LOAN ACT OF 1955.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-15-2 NMSA 1978 (being Laws 1955,
Chapter 128, Section 2, as amended) is amended to read:

"58-15-2. DEFINITIONS.--The following words and terms
when used in the New Mexico Small Loan Act of 1955 [~~shall~~] have
the following meanings unless the context clearly requires a
different meaning. The meaning ascribed to the singular form
[~~shall apply~~] applies also to the plural:

[A. "~~person~~" shall include individuals, copartners,
~~associations, trusts, corporations and any other legal entity;~~]

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underscored material = new
[bracketed material] = delete

1 A. "consumer" means a person who enters into a loan
2 agreement and receives the loan proceeds in New Mexico;

3 B. "debit authorization" means an authorization
4 signed by a consumer to electronically transfer or withdraw
5 funds from the consumer's account for the specific purpose of
6 repaying a loan;

7 C. "department" or "division" means the financial
8 institutions division of the regulation and licensing
9 department;

10 D. "director" means the director of the division;

11 E. "installment loan" means a loan that is to be
12 repaid in a minimum of six successive substantially equal
13 payment amounts to pay off a loan in its entirety with a period
14 of no less than one hundred eighty days to maturity.

15 "Installment loan" does not mean a loan in which a licensee
16 requires, as a condition of making the loan, the use of post-
17 dated checks or debit authorizations for repayment of that
18 loan;

19 [~~B.~~] F. "license" [~~shall mean~~] means a permit
20 issued under the authority of the New Mexico Small Loan Act of
21 1955 to make loans and collect charges therefor strictly in
22 accordance with the provisions of [~~the New Mexico Small Loan~~
23 Act of 1955] that act at a single place of business. It shall
24 constitute and shall be construed as a grant of a [~~revokable~~
25 revocable privilege only to be held and enjoyed subject to all

1 the conditions, restrictions and limitations contained in the
 2 New Mexico Small Loan Act of 1955 and lawful regulations
 3 promulgated by the director [~~of the financial institutions~~
 4 ~~division~~] and not otherwise;

5 ~~[G.]~~ G. "licensee" [shall mean] means a person to
 6 whom one or more licenses have been issued [~~hereunder~~] pursuant
 7 to the New Mexico Small Loan Act of 1955 upon [~~their~~] the
 8 person's written application electing to become a licensee and
 9 consenting to exercise the privilege of a licensee solely in
 10 conformity with the New Mexico Small Loan Act of 1955 and the
 11 lawful regulations promulgated by the director [~~of the~~
 12 ~~financial institutions division hereunder~~] under that act and
 13 whose name [~~or names appear~~] appears on the face of the
 14 license;

15 ~~[D. "director" means the director of the financial~~
 16 ~~institutions division of the commerce and industry and~~
 17 ~~licensing department;~~

18 ~~E. "department" means the financial institutions~~
 19 ~~division of the commerce and industry department;]~~

20 H. "payday loan" means a loan in which the licensee
 21 accepts a personal check or debit authorization tendered by the
 22 consumer and agrees in writing to defer presentment of that
 23 check or use of the debit authorization until the consumer's
 24 next payday or another date agreed to by the licensee and the
 25 consumer and:

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1 (1) includes any advance of money or
2 arrangement or extension of credit whereby the licensee, for a
3 fee, finance charge or other consideration:

4 (a) accepts a dated personal check or
5 debit authorization for the specific purpose of repaying a
6 payday loan;

7 (b) agrees to hold a dated personal
8 check or debit authorization for a period of time prior to
9 negotiating or depositing the personal check or debit
10 authorization; or

11 (c) pays to the consumer, credits to the
12 consumer's account or pays another person on behalf of the
13 consumer the amount of an instrument actually paid or to be
14 paid pursuant to the New Mexico Small Loan Act of 1955; but

15 (2) does not include:

16 (a) an overdraft product or service
17 offered by a banking corporation, savings and loan association
18 or credit union; and

19 (b) installment loans;

20 I. "payday loan product" means a payday loan or a
21 payment plan pursuant to Section 58-15-35 NMSA 1978;

22 J. "person" includes an individual, copartner,
23 association, trust, corporation and any other legal entity;

24 K. "renewed payday loan" means a loan in which a
25 consumer pays in cash the administrative fee payable under a

1 payday loan agreement and refinances all or part of the unpaid
 2 principal balance of an existing payday loan with a new payday
 3 loan from the same licensee. A "renewed payday loan" includes
 4 a transaction in which a consumer pays off all or part of an
 5 existing payday loan with the proceeds of a payday loan from
 6 the same licensee; and

7 L. "simple interest" means a method of calculating
 8 interest in which the amount of interest is calculated based on
 9 the annual interest rate disclosed in the loan agreement and is
 10 computed only on the outstanding principal balance of the
 11 loan."

12 Section 2. Section 58-15-3 NMSA 1978 (being Laws 1955,
 13 Chapter 128, Section 3, as amended) is amended to read:

14 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
 15 PENALTY.--

16 A. ~~[No]~~ A person shall not engage in the business
 17 of lending in amounts of two thousand five hundred dollars
 18 (\$2,500) or less for a loan without first having obtained a
 19 license from the director. Nothing contained in this
 20 subsection shall restrict or prohibit a licensee under the New
 21 Mexico Small Loan Act of 1955 from making loans in any amount
 22 under the New Mexico Bank Installment Loan Act of 1959 in
 23 accordance with the provisions of Section 58-7-2 NMSA 1978.

24 B. Nothing in the New Mexico Small Loan Act of 1955
 25 shall apply to a person making individual advances of two

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1 thousand five hundred dollars (\$2,500) or less under a written
2 agreement providing for a total loan or line of credit in
3 excess of two thousand five hundred dollars (\$2,500) [~~for which~~
4 ~~real estate is pledged as collateral~~].

5 C. [~~Any~~] A banking corporation, savings and loan
6 association or credit union operating under the laws of the
7 United States or of [~~New Mexico~~] a state shall be exempt from
8 the licensing requirements of the New Mexico Small Loan Act of
9 1955, nor shall that act apply to [~~any~~] business transacted by
10 any [~~such~~] person under the authority of and as permitted by
11 any such law nor to any bona fide pawnbroking business
12 transacted under a pawnbroker's license nor to bona fide
13 commercial loans made to dealers upon personal property held
14 for resale. Nothing contained in the New Mexico Small Loan Act
15 of 1955 shall be construed as abridging the rights of any of
16 those exempted from the operations of that act from contracting
17 for or receiving interest or charges not in violation of [~~any~~]
18 an existing applicable statute of this state.

19 D. The provisions of Subsection A of this section
20 apply to [~~any~~]:

21 (1) a person [~~owning any~~] who owns an
22 interest, legal or equitable, in the business or profits of
23 [~~any~~] a licensee and whose name does not specifically appear on
24 the face of the license, except a stockholder in a corporate
25 licensee; and

1 ~~[to any]~~ (2) a person who seeks to evade its
2 application by any device, subterfuge or pretense whatsoever,
3 including but not thereby limiting the generality of the
4 foregoing:

5 (a) the loan, forbearance, use or sale
6 of credit (as guarantor, surety, endorser, comaker or
7 otherwise), money, goods or things in action;

8 (b) the use of collateral or related
9 sales or purchases of goods or services or agreements to sell
10 or purchase, whether real or pretended;

11 (c) receiving or charging compensation
12 for goods or services, whether or not sold, delivered or
13 provided; and

14 (d) the real or pretended negotiation,
15 arrangement or procurement of a loan through any use or
16 activity of a third person, whether real or fictitious.

17 E. ~~[Any]~~ A person, copartnership, trust
18 ~~[and the trustees or beneficiaries thereof]~~ or a trustee or
19 beneficiary thereof or an association or corporation ~~[and the~~
20 ~~several members, officers, directors, agents and employees~~
21 ~~thereof who violate or participate]~~ or a member, officer,
22 director, agent or employee thereof who violates or
23 participates in the violation of ~~[any]~~ a provision of
24 Subsection A of this section is guilty of a petty misdemeanor
25 and upon conviction shall be sentenced pursuant to the

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1 provisions of Subsection B of Section 31-19-1 [~~(B)~~] NMSA 1978.
2 [~~Any~~] A contract or loan in the making or collection of which
3 [~~any~~] an act is done that violates Subsection A or D of this
4 section is void and the lender has no right to collect, receive
5 or retain any principal, interest or charges whatsoever."

6 Section 3. Section 58-15-5 NMSA 1978 (being Laws 1978,
7 Chapter 6, Section 1, as amended) is amended to read:

8 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--
9 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF
10 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE
11 FEES--LICENSEE BOUND BY ACT.--

12 A. Upon the filing of an application, whether it is
13 an original or a renewal, the director shall investigate the
14 facts concerning the application and the requirements provided
15 in this section.

16 [~~Any~~] B. An applicant for license, upon written
17 notice to do so by the director, shall, within twenty days
18 after service of the notice, furnish in writing, under oath, to
19 the director [~~any and~~] all additional information required by
20 the director that may be relevant or, in the opinion of the
21 director, helpful [~~to him~~] in conducting [~~his~~] the
22 investigation.

23 C. Failure to comply with the director's
24 requirement for supplemental information or the willful
25 furnishing of false information is sufficient [~~ground~~] grounds

1 for denial of license.

2 D. False or misleading information willfully and
3 intentionally furnished to the director prior to the issuance
4 of any license is [~~ground~~] grounds for suspension or revocation
5 of any license in accordance with the procedures for suspension
6 or revocation of license in the New Mexico Small Loan Act of
7 1955.

8 E. The director shall grant or deny each
9 application for an original license within sixty days from the
10 filing of the application with the required information and
11 fees, unless the period is extended by written agreement
12 between the applicant and the director.

13 [~~B.~~] F. In the event the director finds that:

14 (1) [~~that~~] the financial responsibility,
15 character and general fitness of the applicant for an original
16 license and of the individual members and beneficiaries
17 thereof, if the applicant is a copartnership, association or
18 trust, and of the officers and directors thereof, if the
19 applicant is a corporation, are such as to command the
20 confidence of the public and to warrant belief that the
21 business will be operated lawfully, honestly, fairly and
22 efficiently within the declared purposes and spirit of the New
23 Mexico Small Loan Act of 1955;

24 (2) [~~that~~] allowing the applicant to engage in
25 business will promote the convenience and advantage of the

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1 community in which the business of the applicant is to be
2 conducted; and

3 (3) [~~that~~] the applicant has available for
4 operation of the business at the specified location cash or its
5 equivalent, convertible securities or receivables of thirty
6 thousand dollars (\$30,000) or any combination thereof;
7 [~~he~~] the director shall enter an order granting the
8 application, file [~~his~~] the director's findings and, upon
9 payment of the license fee of five hundred dollars (\$500),
10 issue and deliver a license to the applicant.

11 [~~G.~~] G. If the director does not make the findings
12 enumerated in Subsection [~~B~~] F of this section, [~~he~~] the
13 director shall enter an order denying the application, notify
14 the applicant of the denial and retain the application fee.
15 Within thirty days after the entry of such an order, [~~he~~] the
16 director shall prepare written findings and shall deliver a
17 copy to the applicant.

18 [~~D.~~] H. A written application for license renewal
19 [~~licenses~~] shall be filed on or before March 31 of each year,
20 and thereupon the director shall investigate the facts and
21 review [~~his~~] the files of examinations of the applicant made by
22 [~~his~~] the director's office and of complaints filed by
23 borrowers, if any. The director shall deliver a renewal
24 license to the applicant if [~~he~~] the director finds that:

25 (1) [~~that~~] no valid complaints of violations

1 or abuses of the New Mexico Small Loan Act of 1955 or of the
2 regulations of the director promulgated under that act have
3 been filed by borrowers;

4 (2) [~~that his~~] examinations of the affairs of
5 the applicant indicate that the business has been conducted and
6 operated lawfully and efficiently within the declared purposes
7 and spirit of the New Mexico Small Loan Act of 1955; and

8 (3) [~~that~~] the financial responsibility,
9 experience and general fitness and character of the applicant
10 remain such as to command the confidence of the public and to
11 warrant the belief that the business will continue to be
12 operated lawfully and efficiently within the purposes and
13 spirit of the New Mexico Small Loan Act of 1955. [~~he shall~~
14 ~~deliver a renewal license to the applicant.~~

15 E.] I. If the director does not make the findings
16 enumerated in Subsection [~~D~~] H of this section, [~~he~~] the
17 director may grant a temporary extension of the license not
18 exceeding sixty days pending a hearing; shall enter an order
19 fixing a date for hearing upon the application; shall notify
20 the licensee thereof, specifying the particular complaints,
21 violations or abuses or other reasons for [~~his~~] the director's
22 contemplated refusal to renew the license; and shall afford to
23 the applicant an opportunity to be heard. At the hearing, the
24 director shall produce [~~his~~] evidence to establish the truth of
25 the charges of violation or other grounds specified in the

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1 notice, and the applicant shall be accorded the right to
2 produce evidence or other matters of defense. If after the
3 hearing the director finds that the complaints of violations or
4 other grounds specified in the notice are not well-founded,
5 ~~[he]~~ the director shall issue the renewal license. If ~~[he]~~ the
6 director finds that the complaints of violations or other
7 grounds are well-founded, ~~[he]~~ the director shall enter an
8 order denying the renewal application and notify the applicant
9 of the denial, returning the renewal license fee tendered with
10 the application. Within thirty days after the entry of such an
11 order, ~~[he]~~ the director shall prepare written findings and
12 shall deliver a copy of the findings to the applicant. The
13 order shall be subject to review as provided in Section
14 58-15-25 NMSA 1978. The court in its discretion and upon
15 proper showing may order a temporary extension of the license
16 pending disposition of the review proceedings.

17 ~~[F.]~~ J. In connection with the determination of
18 fitness and character of an applicant ~~[under]~~ pursuant to the
19 provisions of this section, the fact that the applicant or
20 licensee is a member of or interested financially in, connected
21 or affiliated with, controls or is controlled by or owns or is
22 owned by other corporations, partnerships, trusts, associations
23 or other legal entities engaged in the lending of money whose
24 policies and practices as to rates of interest, charges and
25 fees and general dealing with borrowers are questionable or

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underscoring material = new
[bracketed material] = delete

1 would constitute violation of the general usury statutes of
2 this state or of the declared purposes and spirit of the New
3 Mexico Small Loan Act of 1955 shall be given such consideration
4 and weight as the director determines.

5 ~~[G.]~~ K. At the time of issuance of original license
6 and each annual renewal thereof, the licensee for each licensed
7 office shall pay to the director as a license fee for the
8 period covered by the license the sum of five hundred dollars
9 (\$500) as a minimum, plus an additional seventy-five cents
10 (\$.75) for each one thousand dollars (\$1,000) or fraction
11 thereof of loans outstanding as of December 31 next preceding,
12 as shown on the applicant's annual report. In the event that
13 the application for annual renewal of the license is
14 delinquent, the licensee shall also pay a delinquency fee of
15 ten dollars (\$10.00) per day for each day the licensee is
16 delinquent in filing the application for renewal.

17 ~~[H. Each]~~ L. A licensee by accepting ~~[any]~~ a
18 license that is issued or renewed or by continuing to operate
19 ~~[any]~~ a licensed office under the New Mexico Small Loan Act of
20 1955 shall by such action be deemed to have consented to be
21 bound by the lawful provisions of that act and all lawful
22 requirements, regulations and orders of the director
23 promulgated or issued pursuant to any authorization granted in
24 that act."

25 Section 4. Section 58-15-9 NMSA 1978 (being Laws 1955,

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1 Chapter 128, Section 9, as amended) is amended to read:

2 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--
3 WITNESSES.--

4 A. At least once each year, the director or [~~his~~
5 ~~duly~~] the director's authorized representative shall make an
6 examination of the place of business of each licensee and [~~such~~
7 ~~of~~] the loans, transactions, books, papers and records of the
8 licensee insofar as they pertain to the business licensed under
9 the New Mexico Small Loan Act of 1955 as [~~he~~] the director may
10 deem necessary. The licensee shall pay to the [~~commissioner~~
11 director] for such annual examination a fee of two hundred
12 dollars (\$200).

13 B. Within a reasonable time after the completion of
14 an examination of a licensed office, the director shall mail to
15 the licensee a copy of the report of the examination, together
16 with any comments, exceptions, objections or criticisms of the
17 director concerning the conduct of the licensee and the
18 operation of the licensed office.

19 [~~B.~~] C. For the purpose of discovering violations
20 of the New Mexico Small Loan Act of 1955 or of securing
21 information lawfully required under that act, the director or
22 [~~his~~~~duly~~] the director's authorized representative may at any
23 time investigate the business and examine the books, accounts,
24 papers and records used therein, including income tax returns
25 or other reports filed in the office of the director of the

1 revenue processing division of the taxation and revenue
2 department of:

3 (1) any licensee;

4 (2) any other person engaged in the business
5 described in Subsection A of Section 58-15-3 NMSA 1978 or
6 participating in such business as principal, agent, broker or
7 otherwise; and

8 (3) any person whom the director has
9 reasonable cause to believe is violating any provision of [~~that~~
10 ~~act~~] the New Mexico Small Loan Act of 1955, whether the person
11 claims to be within the authority or beyond the scope of that
12 act.

13 D. For the purposes of this section, [~~any~~] a person
14 who advertises, solicits or [~~holds himself out~~] makes any
15 representation as being willing to make loan transactions in
16 any amount, except persons, financial institutions or lending
17 agencies operating under charters or licenses issued by [~~any~~] a
18 state or federal agency or under any special statute, shall be
19 subject to investigation under the New Mexico Small Loan Act of
20 1955 and shall be presumed to be engaged in the business
21 described in Subsection A of Section 58-15-3 NMSA 1978 as to
22 any loans of two thousand five hundred dollars (\$2,500) or
23 less.

24 [~~E.~~] E. To facilitate the examinations and
25 investigations by the director and fully disclose the

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1 operations and methods of operation of each licensed office,
2 the licensee shall, in each licensed office, keep on file as
3 part of the records of the office all office manuals,
4 communications or directives containing statements of loan
5 policy to office managers and employees. If the licensee is an
6 individual, corporation, trust or association, the licensee
7 shall keep in at least one office for information of the
8 director a record of the several individuals, firms,
9 beneficiaries of any trust and corporations deriving or
10 receiving any part of the benefits, net income or profits from
11 the operation of the licensee within New Mexico.

12 ~~[D.]~~ F. For the purposes of this section, the
13 director or ~~[his duty]~~ the director's authorized representative
14 shall have and be given free access to the offices and places
15 of business, files, safes and vaults of all licensees and shall
16 have authority to require the attendance of any person and to
17 examine ~~[him]~~ the person under oath relative to such loans or
18 business or to the subject matter of any examination,
19 investigation or hearing as provided in the New Mexico Small
20 Loan Act of 1955. Notices to appear before the director for
21 examination under oath may be served by registered mail. If
22 the party notified to appear is the licensee, any person named
23 on the face of the license being investigated or any agent,
24 employee or manager participating in the licensee's business
25 and ~~[he]~~ the party fails to appear for examination or refuses

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1 to answer questions submitted, the director may, forthwith and
2 without further notice to the licensee, suspend the license
3 involved pending compliance with the notice. Upon failure of
4 any other person to appear or to answer questions, the director
5 may apply to and invoke the aid of any district court of New
6 Mexico in compelling the attendance and testimony of any such
7 person and the production of books, records, written
8 instruments and documents relating to the business of the
9 licensee. [~~Any~~] The district court whose aid is so invoked by
10 the director may, in case of contumacy or refusal to obey any
11 order of the district court issued to compel the attendance of
12 the person or the production of books, records, written
13 instruments and documents, punish the person as for contempt of
14 court.

15 [~~E.~~] G. The director shall prescribe rules of
16 procedure for all hearings, examinations or investigations
17 provided for in the New Mexico Small Loan Act of 1955. The
18 director is not bound by the usual common law or statutory
19 rules of evidence or by any technical or formal rules of
20 procedure or pleading and specification of charges other than
21 as specifically provided in the New Mexico Small Loan Act of
22 1955 but may conduct hearings, examinations and investigations
23 in the manner best calculated to ascertain the substantial
24 rights of the parties interested.

25 [~~F.~~] H. The director has the power to administer

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1 oaths, certify official acts and records of [~~his~~] the
2 director's office, issue subpoenas for witnesses in the name of
3 and under the seal of [~~his~~] the director's office and compel
4 the production of papers, books, accounts and documents. [~~He~~]
5 The director shall issue subpoenas at the instance of any party
6 to a hearing before the division upon payment of a fee of two
7 dollars [~~and~~] fifty cents (\$2.50) for each subpoena so issued.

8 [~~G.~~] I. Depositions may be taken with or without a
9 commission, and written interrogatories may be submitted in the
10 same manner and on the same grounds provided by law for the
11 taking of depositions or submission of written interrogatories
12 in civil actions pending in the district courts of this state.

13 [~~H.~~] J. Each witness who appears before the
14 director by [~~his~~] the director's order shall receive the fees
15 and mileage provided for witnesses in civil actions in the
16 district court. Fees and mileage shall be paid by the state,
17 but no witness subpoenaed at the instance of parties other than
18 the director is entitled to compensation from the state for
19 attendance or mileage unless the director certifies that [~~his~~]
20 the witness' testimony is material.

21 [~~I.~~] K. Whenever the director has reasonable cause
22 to believe that [~~any~~] a person is violating [~~any~~] a provision
23 of the New Mexico Small Loan Act of 1955, [~~he~~] the director
24 may, in addition to all actions provided for in that act and
25 without prejudice thereto, enter an order requiring the person

1 to desist or to refrain from the violation. An action may be
 2 brought on the relation of the attorney general and the
 3 director to enjoin the person from engaging in or continuing
 4 the violation or from doing any act in furtherance of the
 5 violation. In any such action, an order or judgment may be
 6 entered awarding a preliminary or final injunction as may be
 7 deemed proper. In addition to all other means provided by law
 8 for the enforcement of a temporary restraining order, temporary
 9 injunction or final injunction, the court in which such action
 10 is brought shall have power and jurisdiction to impound and to
 11 appoint a receiver for the property and business of the
 12 defendants, including books, papers, documents and records
 13 pertaining thereto or so much thereof as the court may deem
 14 reasonably necessary to prevent further violations of the New
 15 Mexico Small Loan Act of 1955 through or by means of the use of
 16 the property and business. The receiver, when appointed and
 17 qualified, shall have powers and duties as to custody,
 18 collection, administration, winding up and liquidation of the
 19 property and business as are from time to time conferred upon
 20 ~~him~~ the receiver by the court."

21 Section 5. Section 58-15-10 NMSA 1978 (being Laws 1955,
 22 Chapter 128, Section 10, as amended) is amended to read:

23 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL
 24 INFORMATION.--

25 A. Each licensee shall keep and use in ~~his~~ the

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1 business such books, accounts and records in accordance with
2 sound accounting practices [~~as in the director's opinion~~] that
3 will enable [~~him~~] the director to determine whether the
4 licensee is complying with the provisions of the New Mexico
5 Small Loan Act of 1955 and with the orders and regulations
6 lawfully made by the director [~~under~~] pursuant to the
7 provisions of that act. Each licensee shall preserve the
8 books, accounts and records for at least two years after making
9 the final entry on [~~any~~] a loan recorded therein.

10 B. Each licensee shall, annually on or before March
11 31, file a report with the director giving such relevant
12 information as [~~he~~] the director may reasonably require
13 concerning the business and operations during the preceding
14 calendar year for each licensed place of business conducted by
15 the licensee within the state pursuant to the provisions of the
16 New Mexico Small Loan Act of 1955. The report shall be made
17 under oath and shall be in the form prescribed by the director.
18 A summary of the reports shall be included in the published
19 annual report of the director.

20 C. At the time of filing each annual report, at the
21 time of the annual examination or at any other time when [~~any~~]
22 a license is in effect, the director may, upon written notice,
23 require [~~any~~] a licensee to furnish within twenty days in
24 writing, and under oath if so specified by any written notice
25 issued and served by the director upon the licensee, [~~any and~~

1 ~~all~~] additional information as to ownership of any office;
 2 operation of any office; books, records, files and papers; and
 3 affiliation or relationship with any other person, firm, trust,
 4 association or corporation as, in the opinion of the director,
 5 may be helpful [~~to him~~] in the discharge of [~~his~~] the
 6 director's official duties.

7 D. False or misleading information willfully
 8 furnished to the director by [~~any~~] a licensee in [~~any~~] an
 9 annual report or pursuant to [~~any~~] a notice or requirement of
 10 the director is sufficient [~~ground~~] grounds for suspension and
 11 revocation of license in accordance with the procedures for
 12 suspension or revocation of license set forth in the New Mexico
 13 Small Loan Act of 1955."

14 Section 6. Section 58-15-11 NMSA 1978 (being Laws 1955,
 15 Chapter 128, Section 11, as amended) is amended to read:

16 "58-15-11. REGULATIONS AND ORDERS--CERTIFIED COPIES.--

17 A. The director [~~shall have~~] has authority to make
 18 reasonable regulations and orders for the administration and
 19 enforcement of the New Mexico Small Loan Act of 1955 [~~in~~
 20 ~~addition hereto and consistent herewith~~] and is expressly
 21 authorized to make regulations and orders governing the conduct
 22 of all licensees' operations, including the method and manner
 23 of selling, handling and writing, in connection with any loan,
 24 any form of insurance by the licensee or any agent or employee
 25 in the office of the licensee or of any other firm, person or

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1 corporation associated or affiliated with the licensee or
2 operating in the same building in which the business of the
3 licensee is conducted. Every regulation shall be promulgated
4 by an order, and any ruling, demand, requirement or similar
5 administrative act may be promulgated by an order. Every order
6 shall be in writing, [~~and~~] referenced to the section [~~or~~
7 ~~sections~~] under which it is issued, shall state its effective
8 date and the date of its promulgation and shall be entered in
9 an indexed permanent book [~~which~~] that shall be a public
10 record. A copy of every order promulgating a regulation and of
11 every other order containing a requirement of general
12 application shall be mailed to each licensee at least fifteen
13 days before the effective date [~~thereof~~] of the order.

14 B. The director is expressly authorized to make
15 regulations and orders, in accordance with the provisions of
16 Subsection A of this section, governing the conduct of
17 licensees in making loans to consumers. Such regulations may
18 address all aspects of loans to consumers and shall
19 specifically address:

20 (1) the cost of loans, including fees and
21 interest rates;

22 (2) the terms of loans, including amount,
23 length, renewals, rescission, payments and security;

24 (3) required disclosures to consumers;

25 (4) methods of collection on loans in default;

1 and

2 (5) methods of verifying consumer eligibility
 3 for loans and licensee compliance with the New Mexico Small
 4 Loan Act of 1955 and regulations promulgated pursuant to that
 5 act.

6 C. In determining the regulations to be promulgated
 7 pursuant to this section, the director shall take into
 8 consideration the provisions of Sections 58-15-32 through
 9 58-15-38 NMSA 1978.

10 ~~[B-]~~ D. On application of any person and payment of
 11 the cost thereof, the director shall furnish, under ~~[his]~~ the
 12 director's seal and signed by ~~[him]~~ the director or ~~[his]~~ the
 13 director's deputy, a certified copy of any license, regulation
 14 or order. In any court or proceeding, ~~[such]~~ the copy shall be
 15 prima facie evidence of the fact of the issuance of ~~[such]~~ a
 16 license, regulation or order."

17 Section 7. Section 58-15-12 NMSA 1978 (being Laws 1955,
 18 Chapter 128, Section 12, as amended) is amended to read:

19 "58-15-12. ADVERTISING ~~[SCHEDULE OF CHARGES]~~.--~~[A. No]~~ A
 20 licensee or other person subject to the New Mexico Small Loan
 21 Act of 1955 shall not advertise, display, distribute or
 22 broadcast or cause or permit to be advertised, displayed,
 23 distributed or broadcast in any manner whatsoever ~~[any]~~ a
 24 false, misleading or deceptive statement or representation with
 25 regard to the charges, terms or conditions for loans in the

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1 amount or of the value of two thousand five hundred dollars
2 (\$2,500) or less. The director may require that charges or
3 rates of charge, if stated by a licensee, be stated fully and
4 clearly in such manner as ~~[he may deem]~~ the director deems
5 necessary to prevent misunderstanding ~~[thereof]~~ by prospective
6 borrowers. The director may permit or require licensees to
7 refer in their advertising to the fact that their business is
8 under state supervision, subject to conditions imposed by ~~[him]~~
9 the director to prevent ~~[any]~~ erroneous impressions as to the
10 scope or degree of protection provided by the New Mexico Small
11 Loan Act of 1955.

12 ~~[B. Each licensee shall display in each licensed~~
13 ~~place of business, in a place where it will be readily visible~~
14 ~~by borrowers, a full and accurate schedule of the rates of~~
15 ~~charges upon all classes of loans currently to be made by him,~~
16 ~~stated on a percent per annum basis and also on a percent per~~
17 ~~month basis.]"~~

18 Section 8. Section 58-15-14.1 NMSA 1978 (being Laws 1983,
19 Chapter 95, Section 2) is amended to read:

20 "58-15-14.1. CHARGES--METHOD OF COMPUTATION.--~~[Charges~~
21 ~~on]~~ The simple interest method shall be used for loans made
22 under the New Mexico Small Loan Act of 1955. Interest charges
23 shall not be paid, deducted or received in advance. ~~[Such]~~
24 Interest charges shall not be compounded. However, if part or
25 all of the consideration for a loan contract is the unpaid

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1 principal balance of a prior loan, then the principal amount
 2 payable under the loan contract may include any unpaid charges
 3 [~~which~~] that have accrued within sixty days on the prior loan.
 4 Such charges shall be computed on the basis of the number of
 5 days actually elapsed. [~~For the purpose of computing charges,~~
 6 ~~whether at the maximum rate or less, a month shall be any~~
 7 ~~period of thirty consecutive days and the rate of charge for~~
 8 ~~each day shall be one-thirtieth of the monthly rate.]"~~

9 Section 9. Section 58-15-17 NMSA 1978 (being Laws 1955,
 10 Chapter 128, Section 15, as amended) is amended to read:

11 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
 12 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
 13 AND INTEREST.--

14 A. Every licensee shall:

15 (1) at the time [~~any~~] a loan is made within
 16 the provisions of the New Mexico Small Loan Act of 1955,
 17 deliver to the borrower or, if there are two or more borrowers
 18 on the same obligation, to one of them, a statement in English
 19 or Spanish as requested by the borrower, on which shall be
 20 printed a copy of Section 58-15-14.1 NMSA 1978 [~~disclosing~~] and
 21 that discloses in clear and distinct terms:

22 (a) the amount of the loan;

23 (b) the date the loan was made;

24 (c) a schedule or a description of the
 25 payments;

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1 (d) the type of the security, if any,
2 for the loan;

3 (e) the name and address of the licensed
4 office;

5 (f) the name of the person primarily
6 obligated for the loan;

7 (g) the amount of principal;

8 (h) the agreed rate of charge stated on
9 [~~a percent per month and~~] a percent per year basis and the
10 amount in dollars and cents; [~~and~~]

11 (i) all other disclosures required
12 pursuant to state and federal law; and

13 (j) other items allowable pursuant to
14 that act, so stated as to clearly show the allocation of each
15 item included;

16 (2) for each payment made on account of any
17 such loan, give to the person making it a plain and complete
18 receipt specifying the date and amount of the payment, the
19 amount applied to interest and principal and the balance
20 unpaid. When payment is made in any other manner than by the
21 borrower in person, by an agent of the borrower or by check or
22 money order, the licensee shall mail the receipt to the
23 borrower's last known address or hold the receipt for delivery
24 upon request of the borrower. A copy of all receipts shall be
25 kept on file in the office of the licensee as a part of [~~his~~]

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1 the licensee's records; and

2 (3) upon payment of the loan in full, mark
3 plainly every note and promise to pay signed by any obligor
4 with the word "paid" or "canceled" and promptly file or record
5 a release of any mortgage if the mortgage has been recorded,
6 restore any pledge and cancel and return any note and any
7 assignment given to the licensee. A licensee may mark and
8 return a copy of the note, promise to pay or any assignment if
9 the copy accurately reproduces the complete original.

10 B. ~~[No]~~ A licensee shall not take ~~[any]~~ a note or
11 promise to pay that does not disclose the amount of the loan, a
12 schedule of payments, or a description thereof, and the agreed
13 charge or rate of charge or any instrument in which blanks are
14 left to be filled in after execution.

15 C. If judgment is obtained against ~~[any]~~ a party
16 ~~[or any]~~ on a loan made ~~[under]~~ pursuant to the provisions of
17 the New Mexico Small Loan Act of 1955, neither the judgment nor
18 the loan shall carry, from the date of the judgment, ~~[any]~~
19 charges against ~~[any]~~ a party to the loan other than ~~[court]~~
20 costs, ~~[attorneys']~~ attorney fees and post-judgment interest
21 ~~[on the amount of the judgment at ten percent a year]~~ as
22 provided by law.

23 D. Any loan made under the provisions of the New
24 Mexico Small Loan Act of 1955 that is filed and approved as a
25 claim in any bankruptcy proceeding shall, from a date ninety

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1 days subsequent to the date of adjudication, bear interest at
2 the rate of ten percent a year only. This limitation shall not
3 apply when the bankrupt is not discharged in bankruptcy or to
4 any obligation not dischargeable under the provisions of the
5 Bankruptcy Act presently in force or as hereafter amended.

6 E. No loan made under the provisions of the New
7 Mexico Small Loan Act of 1955 shall bear interest after ninety
8 days from the date of the death of the borrower in excess of a
9 rate of ten percent a year on the unpaid principal balance of
10 the loan.

11 F. No loan made under the provisions of the New
12 Mexico Small Loan Act of 1955 shall bear interest after twelve
13 months from the date of maturity of the loan in excess of ten
14 percent a year upon the unpaid principal balance of the loan."

15 Section 10. Section 58-15-20 NMSA 1978 (being Laws 1955,
16 Chapter 128, Section 18) is amended to read:

17 "58-15-20. FEES AND COSTS.--

18 [~~(a) FILING OR RECORDING FEES~~] A. Notwithstanding
19 any provision of [~~this Act~~] the New Mexico Small Loan Act of
20 1955, lawful fees, if any, actually and necessarily paid out by
21 the licensee to [~~any~~] a public officer for the filing,
22 recording or releasing in [~~any~~] a public office [~~any~~] of an
23 instrument securing the loan may be charged to the borrower.

24 [~~(b) ATTORNEY FEES~~] B. Notwithstanding any
25 provision in [~~any~~] a note or other loan contract taken or

1 received [~~under this act~~] pursuant to the provisions of the New
 2 Mexico Small Loan Act of 1955, attorney fees shall not be
 3 charged or collected except [~~where such~~] when the note or other
 4 contract has been [~~turned~~] submitted in good faith to an
 5 attorney for collection and after diligent and good faith
 6 effort to collect [~~has failed~~] on the part of the licensee has
 7 failed.

8 [~~(c) COURTS COSTS Where suit is filed in any court~~
 9 ~~of competent jurisdiction, court costs shall be collectable in~~
 10 ~~accordance with the laws of New Mexico applicable thereto.~~

11 [~~(d) NOTARY FEES PROHIBITED~~] C. Notary fees
 12 incident to the taking of [~~any~~] a lien to secure a small loan
 13 or releasing such a lien shall not be charged or collected by
 14 [~~any~~] a licensee, [~~nor by any~~] an officer, agent or employee of
 15 a licensee [~~nor by~~] or anyone within [~~any~~] an office, room or
 16 place of business in which a small loan office is conducted.

17 D. Delinquency fees shall not exceed five cents
 18 (\$.05) for each one dollar (\$1.00) of each installment more
 19 than ten days in arrears; provided that the total of
 20 delinquency charges on any such installment shall not exceed
 21 ten dollars (\$10.00) and that only one delinquency charge shall
 22 be made on any one installment regardless of the period during
 23 which the installment remains unpaid."

24 Section 11. Section 58-15-23 NMSA 1978 (being Laws 1955,
 25 Chapter 128, Section 21) is amended to read:

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1 "58-15-23. VIOLATION OF GENERAL USURY LAWS.--The [~~wilful~~]
2 violation by [~~any~~] a licensee or by [~~any~~] an officer, manager,
3 director, trustee, executive or employee directly engaged in
4 operating a small loan office under the provisions of [~~this~~
5 ~~Act~~] the New Mexico Small Loan Act of 1955 of any usury statute
6 of this state within [~~any~~] an office, room or place of business
7 in which the making of loans as a licensee is solicited or
8 engaged or in association or conjunction therewith [~~shall be~~
9 ~~ground~~] is grounds for suspension and revocation of license in
10 accordance with the applicable procedures [~~applicable thereto~~
11 ~~as~~] set forth [~~herein~~] in that act."

12 Section 12. Section 58-15-30 NMSA 1978 (being Laws 1955,
13 Chapter 128, Section 28) is amended to read:

14 "58-15-30. PENALTIES--GENERAL.--Any person,
15 copartnership, trust, association or corporation and the
16 several members, beneficiaries, officers, directors, agents and
17 employees thereof who [~~shall~~] violate or participate in the
18 violation of any provision of the [~~sections of this Act shall~~
19 ~~be~~] New Mexico Small Loan Act of 1955 are guilty of a
20 misdemeanor and upon conviction [~~thereof~~] shall be [~~punishable~~]
21 punished by a fine of not less than [~~one hundred (\$100.00)~~
22 ~~dollars and not more than three hundred (\$300.00) dollars~~] five
23 hundred dollars (\$500) or more than one thousand dollars
24 (\$1,000) or by imprisonment of not more than [~~ninety (90) days~~]
25 six months or [~~by~~] both [~~such fine and imprisonment~~] in the

1 discretion of the court."

2 Section 13. A new section of the New Mexico Small Loan
3 Act of 1955, Section 58-15-32 NMSA 1978, is enacted to read:

4 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY
5 LOANS.--

6 A. No licensee shall make a payday loan to a
7 consumer if the total principal amount of the loan and fees,
8 when combined with the principal amount and fees of all of the
9 consumer's other outstanding payday loan products, exceeds
10 twenty-five percent of the consumer's gross monthly income.

11 B. Without affecting the rights of a consumer to
12 prepay a payday loan product at any time without additional
13 cost or penalty:

14 (1) no payday loan shall have a stated
15 maturity greater than thirty-five days;

16 (2) no payday loan shall have a stated minimum
17 term less than fourteen days unless agreed to in writing by the
18 consumer; and

19 (3) there shall be a scheduled pay date for
20 the consumer within the term of the payday loan.

21 C. A payday loan agreement shall include a
22 provision granting the consumer the right to rescind the
23 transaction by returning in cash, or through certified funds,
24 one hundred percent of the amount advanced by a licensee for a
25 payday loan no later than 5:00 p.m. on the first day of

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1 business conducted by the licensee following the execution of
2 the payday loan agreement. If a consumer exercises the right
3 of rescission pursuant to this subsection, no fee for the
4 rescinded transaction shall be charged to the consumer and the
5 licensee shall not charge or impose on the consumer a fee for
6 exercising the right of rescission pursuant to this subsection.
7 If this subsection is applicable, any fee collected by a
8 licensee shall be returned in full to the consumer.

9 D. A consumer shall be permitted to make payments
10 in any amount on a payday loan product at any time before
11 maturity without additional fees. A payment received by a
12 licensee shall first be applied to administrative fees owed
13 with any remaining amount to be applied to principal.

14 E. After each payment is made, in full or in part,
15 on a payday loan product, the licensee shall give to the person
16 making the payment a signed, dated receipt showing the amount
17 paid; the amount credited toward administrative fees and
18 principal; and the balance due on the loan.

19 F. A check written by a consumer for a payday loan
20 product shall be payable to the order of the licensee.

21 G. Prior to the consummation of a payday loan, the
22 licensee shall provide the consumer, or each consumer if there
23 is more than one, with copies of the payday loan product
24 agreement in English, Spanish or other language as determined
25 by the director. Consumers shall have the option to decide

1 which language version of the agreement they wish to receive.

2 H. Licensees making payday loans shall provide the
3 consumer with an information brochure in English, Spanish or
4 other language as determined by the director. Consumers shall
5 have the option to decide which language version of the
6 brochure they wish to receive.

7 I. The disclosure of the credit terms of a payday
8 loan product shall be according to and governed by the
9 requirements of 12 CFR 226, known as "Regulation Z". The
10 definitions and requirements of that regulation and commentary
11 shall apply to payday loan products as if those provisions are
12 fully set out in this section.

13 J. A licensee shall collect on payday loan products
14 in default in a professional, fair and lawful manner. A
15 licensee that complies with the requirements and prohibitions
16 set forth in 15 U.S.C. 1692c-1692f of the federal Fair Debt
17 Collection Practices Act shall be deemed to have operated in a
18 professional, fair and lawful manner."

19 Section 14. A new section of the New Mexico Small Loan
20 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

21 "58-15-33. [NEW MATERIAL] PAYDAY LOAN PRODUCTS--PERMITTED
22 CHARGES.--The following provisions apply only to payday loan
23 products:

24 A. a licensee shall not charge or receive from a
25 consumer, directly or indirectly, fees or charges except as

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1 provided in this section;

2 B. upon the execution of a new payday loan, the
3 licensee may impose an administrative fee of not more than
4 fifteen dollars fifty cents (\$15.50) per one hundred dollars
5 (\$100) of principal, which fee is fully earned and
6 nonrefundable at the time a payday loan agreement is executed
7 and payable in full at the end of the term of the payday loan
8 or upon prepayment of the payday loan unless a payday loan is
9 rescinded pursuant to Subsection C of Section 58-15-32 NMSA
10 1978;

11 C. upon the execution of a new payday loan
12 agreement, the licensee may impose an additional administrative
13 fee of not more than fifty cents (\$.50) per executed new payday
14 loan agreement as necessary to cover the cost to the licensee
15 of verification pursuant to Section 58-15-37 NMSA 1978, which
16 fee is fully earned and nonrefundable at the time a payday loan
17 agreement is executed and payable in full at the end of the
18 term of the payday loan or upon prepayment of the payday loan
19 unless a payday loan is rescinded pursuant to Subsection C of
20 Section 58-15-32 NMSA 1978;

21 D. a licensee shall not charge a consumer interest
22 on the outstanding principal owed on a payday loan product; and

23 E. if there are insufficient funds to pay a check
24 or other type of debit on the date of presentment by the
25 licensee, a licensee may charge a consumer a fee not to exceed

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1 fifteen dollars (\$15.00). Only one fee may be collected by a
2 licensee on a check or debit authorization. A check or debit
3 authorization request shall not be presented to a financial
4 institution by a licensee for payment more than one time unless
5 the consumer agrees in writing, after a check or other type of
6 debit has been dishonored, to one additional presentment or
7 deposit."

8 Section 15. A new section of the New Mexico Small Loan
9 Act of 1955, Section 58-15-34 NMSA 1978, is enacted to read:

10 "58-15-34. [NEW MATERIAL] PAYDAY LOAN PRODUCTS--
11 PROHIBITED ACTS.--A licensee shall not:

12 A. enter into an agreement for a renewed payday
13 loan or otherwise refinance or extend the term of a payday
14 loan;

15 B. enter into an agreement for a payday loan with a
16 consumer who is participating in a payment plan pursuant to
17 Section 58-15-35 NMSA 1978;

18 C. threaten or intimidate a consumer or threaten to
19 use or request the use of criminal process in this or another
20 state to collect on a payday loan product;

21 D. use a device or agreement that would have the
22 effect of charging or collecting more fees, charges or interest
23 than that allowed by law by entering into a different type of
24 transaction with the consumer that has that effect;

25 E. require a consumer to enter into a new payday

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1 loan to pay an existing payday loan in whole or in part when
2 the existing loan is eligible for a payment plan pursuant to
3 Section 58-15-35 NMSA 1978;

4 F. charge a fee to cash a check representing the
5 proceeds of a payday loan product;

6 G. charge a late fee or delinquency charge if a
7 consumer fails to repay a payday loan product on time;

8 H. assign or attempt to assign a consumer's
9 personal check to a third party unless for collection purposes;

10 I. use or attempt to use the check written by the
11 consumer for a payday loan product as collateral for purposes
12 other than repaying that payday loan product;

13 J. require a consumer to provide multiple checks or
14 multiple debt authorizations;

15 K. accept collateral for a payday loan product
16 other than the consumer's check or debit authorization or
17 require a consumer to provide a guaranty from another person
18 for a payday loan product;

19 L. include any of the following provisions in a
20 payday loan product agreement:

- 21 (1) a hold harmless clause;
- 22 (2) a confession of judgment clause or power
23 of attorney;
- 24 (3) an assignment of or order for payment of
25 wages or other compensation for services;

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1 (4) a waiver of claims for punitive damages;

2 (5) a provision in which the consumer agrees
3 not to assert a claim or defense arising out of the contract;

4 (6) a waiver of a provision of the New Mexico
5 Small Loan Act of 1955;

6 (7) a waiver of the right to enter into a
7 payment plan pursuant to Section 58-15-35 NMSA 1978; or

8 (8) a waiver of any rights secured by New
9 Mexico law;

10 M. make a payday loan product contingent on the
11 purchase of insurance or other goods or services;

12 N. take a check, instrument or form in which blanks
13 are left to be filled in after execution of the check,
14 instrument or form;

15 O. offer, arrange, act as an agent for or assist a
16 third party in any way in the making of a payday loan product
17 unless the third party complies with all applicable federal and
18 state laws and regulations;

19 P. knowingly enter into a payday loan product with
20 a consumer who lacks the capacity to consent;

21 Q. use an agency agreement or partnership agreement
22 as a scheme or contrivance to circumvent the application of the
23 provisions of the New Mexico Small Loan Act of 1955 to a
24 consumer's payday loan product. For the purposes of this
25 subsection:

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1 (1) "agency agreement" means any agreement
2 between in-state entities and a banking corporation, savings
3 and loan association or credit union operating under the laws
4 of the United States or of any state whereby the in-state agent
5 holds a predominant economic interest in the revenues generated
6 by a payday loan made to New Mexico residents; and

7 (2) "partnership agreement" means any
8 agreement between in-state entities and a banking corporation,
9 savings and loan association or credit union operating under
10 the laws of the United States or of any state whereby the
11 in-state partner holds a predominant economic interest in the
12 revenues generated by a payday loan made to New Mexico
13 residents; or

14 R. finance or refinance all or any portion of any
15 fees permitted by Section 58-15-33 NMSA 1978."

16 Section 16. A new section of the New Mexico Small Loan
17 Act of 1955, Section 58-15-35 NMSA 1978, is enacted to read:

18 "58-15-35. [NEW MATERIAL] PAYDAY LOANS--PAYMENT PLANS.--

19 A. During the term of a payday loan, the licensee
20 shall offer the consumer the opportunity to enter into an
21 unsecured payment plan for any unpaid principal balance of the
22 payday loan. The consumer may elect, and a licensee shall
23 permit, entry into a payment plan for the unpaid principal
24 balance of the payday loan.

25 B. To be eligible to enter into a payment plan, a

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1 consumer must first pay the original administrative fees for
2 the payday loan pursuant to Section 58-15-33 NMSA 1978. No
3 fees, charges or interest may be charged for a payment plan.

4 C. A payment plan shall provide for:

5 (1) a minimum of one hundred thirty days for
6 the repayment of the unpaid principal balance of a payday loan;
7 and

8 (2) relatively equal installment payments
9 based upon the consumer's schedule of pay periods.

10 D. A licensee that fails to offer a consumer the
11 opportunity to enter into a payment plan for a payday loan
12 pursuant to Subsection A of this section shall not commence a
13 legal proceeding against a consumer to collect on that payday
14 loan if it has not been fully repaid."

15 Section 17. A new section of the New Mexico Small Loan
16 Act of 1955, Section 58-15-36 NMSA 1978, is enacted to read:

17 "58-15-36. [NEW MATERIAL] PAYDAY LOANS--WAITING PERIOD.--
18 A licensee shall not make a payday loan to a consumer who has
19 entered into a payment plan pursuant to Section 58-15-35 NMSA
20 1978 until at least ten calendar days have passed since the
21 consumer completed all payment obligations pursuant to all of
22 the consumer's outstanding payday loan products, including that
23 payment plan."

24 Section 18. A new section of the New Mexico Small Loan
25 Act of 1955, Section 58-15-37 NMSA 1978, is enacted to read:

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1 "58-15-37. [NEW MATERIAL] PAYDAY LOANS--VERIFICATION.--

2 A. Before entering into a payday loan agreement
3 with a consumer, a licensee shall use a commercially reasonable
4 method of verification to verify that the proposed loan
5 agreement is permissible under the provisions of the New Mexico
6 Small Loan Act of 1955.

7 B. No later than November 1, 2007, the director
8 shall certify that one or more consumer reporting service
9 databases are commercially reasonable methods of verification.
10 The list of consumer reporting services that the director has
11 certified as providing commercially reasonable methods of
12 verification shall be posted on the division's web site and
13 shall be mailed to each licensee by first class mail at the
14 address of record as shown on the division's licensing files.

15 C. Each licensee who provides payday loan products
16 shall comply with Subsection A of this section no later than
17 November 30, 2007.

18 D. A consumer seeking a payday loan may make a
19 direct inquiry to the consumer reporting service to request a
20 more detailed explanation of the basis for a consumer reporting
21 service's determination that the consumer is ineligible for a
22 new payday loan, and the consumer reporting service shall
23 provide a reasonable response to the consumer.

24 E. In certifying a commercially reasonable method
25 of verification, the director shall ensure the certified

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1 database:

2 (1) provides real-time access through an
3 internet connection or, if real-time access through an internet
4 connection becomes unavailable due to technical problems
5 incurred by the consumer reporting service, through alternative
6 verification mechanisms, including verification by telephone;

7 (2) is accessible to the division and to
8 licensees in real time in order to ensure compliance with the
9 New Mexico Small Loan Act of 1955 regardless of where the
10 consumer requests a payday loan in New Mexico and in order to
11 provide any other information the director deems necessary;

12 (3) requires licensees to input whatever
13 information is required by the New Mexico Small Loan Act of
14 1955;

15 (4) contains a real-time regulator interface
16 that allows the division access to the consumer reporting
17 service database for the required monitoring and reporting
18 function, including the ability to determine consumer
19 eligibility and to generate reports for licensee examinations,
20 regulatory reporting and program monitoring;

21 (5) provides licensees with no more than a
22 statement that a consumer is eligible or ineligible for a new
23 payday loan and the reason for the determination;

24 (6) provides adequate safeguards to ensure
25 that consumer information contained in the database is kept

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1 strictly confidential;

2 (7) does not allow the licensee to enter into
3 a payday loan that would be in violation of the New Mexico
4 Small Loan Act of 1955;

5 (8) ensures that information submitted to the
6 certified database is kept confidential and shall not be
7 released or otherwise made available to the public;

8 (9) demonstrates a working system to the
9 division prior to the certification of the database; and

10 (10) is generated by a registered consumer
11 reporting service that is subject to the applicable rules and
12 regulations applied by the federal trade commission under the
13 Fair Credit Reporting Act.

14 F. A licensee shall update the certified database
15 by inputting all information required under Paragraph (3) of
16 Subsection E of this section at the time that:

17 (1) a payday loan is made;

18 (2) a consumer elects to enter into a payment
19 plan;

20 (3) a consumer's payday loan is paid in full;
21 or

22 (4) a licensee determines a payday loan is in
23 default.

24 G. A licensee may rely on the information contained
25 in the certified database as accurate and is not subject to any

1 penalty or liability as a result of relying on inaccurate
2 information contained in the database.

3 H. In determining whether a consumer reporting
4 service should be certified as a commercially reasonable method
5 of verification, the director shall consider whether such
6 consumer reporting service is adequately capitalized,
7 demonstrates the resources and the ability to perform the
8 services required pursuant to this section and has appropriate
9 surety to ensure performance of its obligations pursuant to
10 this section and to reasonably protect claimants in the event
11 that actions or inactions on the part of the consumer reporting
12 service results in damages to licensees or consumers."

13 Section 19. A new section of the New Mexico Small Loan
14 Act of 1955, Section 58-15-38 NMSA 1978, is enacted to read:

15 "58-15-38. [NEW MATERIAL] REQUIRED DISCLOSURES WHEN
16 MAKING PAYDAY LOANS--REQUIRED SIGNAGE.--

17 A. A licensee making payday loans shall provide a
18 notice immediately above the consumer's signature on each
19 payday loan agreement in at least twelve-point bold type using
20 the following language:

21 "(1) A payday loan is not intended to meet long-
22 term financial needs.

23 (2) You should use a payday loan only to meet
24 short-term cash needs.

25 (3) A payday loan is a high-cost loan. You should

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1 consider what other lower-cost loans are available to you.

2 (4) If you cannot fully repay a payday loan when
3 due, you have a right to enter into a payment plan requiring
4 payment within a minimum of one hundred thirty days, in
5 relatively equal installments, based upon your scheduled pay
6 periods. If you enter into a payment plan, you will not have
7 to pay an additional administrative fee or interest on the
8 outstanding principal balance.

9 (5) If you have had payment obligations under a
10 payment plan pursuant to Section 58-15-35 NMSA 1978, you may
11 not enter into a new payday loan until at least ten calendar
12 days have passed since you have completed all payment
13 obligations pursuant to all of your outstanding payday loan
14 products, including that payment plan."

15 B. Each licensee shall display in each licensed
16 place of business in a place where it will be readily legible
17 by consumers, a sign containing the following notice in both
18 English and Spanish: "If you cannot fully repay a payday loan
19 when due, you have a right to enter into a payment plan
20 requiring payment within a minimum of one hundred thirty days,
21 in relatively equal installments, based upon your scheduled pay
22 periods. If you enter into a payment plan, you will not have
23 to pay an additional administrative fee or interest on the
24 outstanding principal balance."."

25 Section 20. A new section of the New Mexico Small Loan

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1 Act of 1955, Section 58-15-39 NMSA 1978, is enacted to read:

2 "58-15-39. [NEW MATERIAL] DUTIES OF DIVISION.--

3 A. The division shall:

4 (1) maintain a list of licensees, which list
5 shall be available to interested persons and the public; and

6 (2) establish a complaint process whereby an
7 aggrieved consumer or other person may file a complaint against
8 a licensee.

9 B. The division shall annually provide a report to
10 the legislature detailing statistics, including data adequate
11 to obtain an accurate understanding of the practices,
12 demographics and legal compliance of all licensees licensed in
13 the state. The division shall compile an annual report by
14 October 1 of each year containing, at a minimum, data regarding
15 all payday loan products entered into in the preceding calendar
16 year on an aggregate basis. Annual reports shall be made
17 available to interested parties and the general public.
18 Consistent with state law, the report shall include, at a
19 minimum, nonidentifying consumer data from the preceding year,
20 including:

21 (1) the total number and dollar amount of
22 payday loan products entered into in the calendar year ending
23 December 31 of the previous year;

24 (2) the total number and dollar amount of
25 payday loan products outstanding as of December 31 of the

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1 previous year;

2 (3) the effective annualized percentage rate
3 and the average number of days of a payday loan during the
4 calendar year ending December 31 of the previous year;

5 (4) the number of payday loan products entered
6 into in the amount of one hundred dollars (\$100) or less, the
7 number of payday loan products entered into in the amount of
8 one hundred one dollars (\$101) to five hundred dollars (\$500),
9 the number of payday loan products entered into in the amount
10 of five hundred one dollars (\$501) to one thousand dollars
11 (\$1,000), the number of payday loan products entered into in
12 the amount of one thousand one dollars (\$1,001) to one thousand
13 five hundred dollars (\$1,500), the number of payday loan
14 products in the amount of greater than one thousand five
15 hundred dollars (\$1,500) and the percentage of total payday
16 loan products entered into in each of those ranges;

17 (5) an estimate of the total dollar amount of
18 fees collected for payday loan products;

19 (6) the total number of payday loan products
20 entered into and the total dollar amount of the net charge-offs
21 or write-offs and of the net recoveries of licensees;

22 (7) the minimum, maximum and average dollar
23 amounts of payday loan products entered into in the calendar
24 year ending December 31 of the previous year;

25 (8) the average payday loan product amount,

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1 average number of transactions and average aggregate payday
2 loan product amount entered into per consumer each year;

3 (9) the average number of days a consumer is
4 engaged in a payday loan product each year;

5 (10) an estimate of the average total fees
6 paid by a payday loan product consumer;

7 (11) the number of consumers who are eligible
8 for payment plans and the number of consumers who enter into
9 payment plans pursuant to Section 58-15-35 NMSA 1978; and

10 (12) the number of consumers who are subject
11 to the restrictions of the waiting period pursuant to Section
12 58-17-36 NMSA 1978."

13 Section 21. REPEAL.--Section 58-15-15 NMSA 1978 (being
14 Laws 1959, Chapter 201, Section 1, as amended) is repealed.

15 Section 22. SEVERABILITY.--If any part or application of
16 this act is held invalid, the remainder or its application to
17 other situations or persons shall not be affected.

18 Section 23. APPLICABILITY.--The provisions of Sections 13
19 through 20 of this act shall not apply to payday loans entered
20 into before November 1, 2007.

21 Section 24. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is November 1, 2007.

underscored material = new
[bracketed material] = delete